

COMMONWEALTH OF VIRGINIA
BOARD OF CORRECTIONS

Regular Meeting.....September 18, 2002
Location6900 Atmore Drive
Richmond, Virginia
PresidingDeputy Secretary of Public Safety Barry Green
PresentDonald L. Cahill
Gregory M. Kallen
Colleen K. Killilea
Renée Trent Maxey
J. Granger Macfarlane
R. W. Mitchell
Sterling C. Proffitt
Dr. Jeffery C. Trimble
AbsentClay B. Hester

10:00 a.m., Wednesday, September 18, 2002

6900 Atmore Drive, Richmond, Virginia

I. Welcome from Secretary of Public Safety (Deputy Secretary Green)

Deputy Secretary Barry Green opened the meeting and explained that Secretary Marshall would be late in attending. He welcomed all on behalf of the Secretary, and stated the Secretary's Office will be there to support the Board and the agency through the tough times ahead. He addressed the published agenda. He noted there was nothing for substantive action other than the election of Board Officers. He proceeded to introduce Mr. Gene M. Johnson, Acting Director for the Department of Corrections. He noted those in attendance from the Attorney General's Office, from the Department of Correctional Education, and the Parole Board.

II. Introductions/New Board Appointments

Election of Temporary Board Chairman

Mr. Michael Leininger, manager of the Communications Unit, suggested to the Board how the meeting should proceed. In order to facilitate the meeting, Ms. Killilea made the *MOTION* that as a duly appointed member of the Board of Corrections, that Ms. Renée Maxey, by vote of the majority of the members of the Board present, sit in the role of temporary Chairman of the Board for the purpose of appointing the nominating committee and overseeing the election of permanent officers elected in accordance with the By-laws of the Board; and as temporary Chairman, that she preside over the conduct of this meeting and any other meeting of the Board until such time as permanent officers have been installed. The motion was seconded by Mr. Donald Cahill. All Board members present verbally noted their affirmative vote. There were no opposing votes noted. Ms. Maxey accepted the election and took over as temporary Board Chair. Mr.

Gregory M. Kallen was absent at the time, and Mr. Clay B. Hester was absent from the meeting in its entirety.

There were no further comments at this time from the Deputy Secretary. Ms. Maxey then asked everyone around the table to introduce themselves.

Ms. Colleen K. Killilea, from Williamsburg is an attorney and a former prosecutor in the City of Hampton, which she left as Chief Deputy Commonwealth's Attorney. She is now in private practice in Williamsburg handling primarily criminal and traffic and domestic relation matters.

Ms. Helen Fahey, is the current Virginia Parole Board Chairman and is an ex-officio member of the Board.

Mr. Gene M. Johnson, Acting Director, has been around for 37 years, stated the Department looks forward to working with the Board.

Mr. Donald L. Cahill, from Stafford County, is a retired police officer and is now a consultant on law enforcement and military technology.

Reverend Dr. Jeffery C. Trimble, from Yorktown, is pastor of a church and also works with the community.

Mr. Sterling C. Proffitt is from Keswick, Virginia. He is the retired superintendent of the Central Virginia Regional Jail and previous to that he was with the Albemarle/Charlottesville Regional Jail. Previous to that, he worked with the state in Probation & Parole District #9.

Mr. Bobby W. Mitchell, from Appomattox, sits presently on the school board and is retired from the Department of Taxation after almost 40 years with the Commonwealth.

Mr. J. Granger Macfarlane, from Roanoke, Virginia, served in the Virginia Senate from 1984 to 1992. He is in the hotel business and is an active business person in Roanoke.

Ms. Renée Maxey is Director of Piedmont Court Services, a local probation program, for six counties. Prior to that, she was with the Department of Justice doing congressional liaison.

III. Welcome from Department of Corrections Executive Staff (Mr. Johnson)

Department Staff Introductions

Mr. Johnson welcomed the Board members. He introduced Mr. John Jabe, Deputy for Administration. Other staff members present included: Mr. Ted Link, the Controller

and Chief Financial Officer for the Department. Mr. Louis Eacho, the Department's Budget Development manager. Mr. Joe Hagenlocker, manager of the Department's Compliance and Accreditation unit. Ms. Donna Lawrence, supervisor with the Accreditation and Compliance unit. Mr. Mike Howerton, Chief of Operations for the Department's Local Facilities unit. Ms. Jan Dow, Special Assistant to the Director. Mr. Mike Leininger, manager of the Communications Unit for the Department. Mr. Larry Traylor, Director of Communications under Mr. Leininger. He is the spokesperson who deals with the press. Mr. Mark Davis from the Attorney General's Office. Mr. Paul Broughton, Human Resources Director for the Department. Mr. Wade Jewell, Budget Operations manager for the Department. Mr. Ivan Tolbert, Assistant Superintendent for Support Programs with the Department of Correctional Education. Mr. Johnson had no further remarks for the Board.

Ms. Maxey introduced Ms. Barbara Reyes, who was serving as the secretary for the meeting.

IV. Board Officers

Appointment of Nominating Committee

Ms. Maxey asked that Rev. Dr. Trimble, Mr. Mitchell, and Ms. Killilea comprise the nominating committee. As there were no other nominations to the committee, Ms. Maxey asked for a vote in support of her selections. All Board members present verbally noted their affirmative vote. There were no opposing votes noted. Mr. Kallen and Mr. Hester were not present. The nominating committee was then instructed to adjourn from the meeting in order to meet, come up with a proposed slate of officers, and report back to the full Board with their recommendations. A recess of the Board meeting was held at this time.

Report of Nominating Committee

The Board meeting was reconvened by Ms. Maxey. Mr. Mitchell reported the committee's recommendations that Granger Macfarlane serve as Chairman; Sterling Proffitt as Vice Chairman; and Colleen Killilea as Secretary. The recommendations were seconded by Mr. Cahill. Ms. Maxey then asked if there were any other nominations to be considered. There being none, a vote on the entire proposed slate was held. All Board members present verbally noted their affirmative vote. There were no opposing votes noted. Mr. Kallen and Mr. Hester were not present. Ms. Maxey welcomed and turned the meeting over to the new Board Chairman, Granger Macfarlane.

Statement by Newly Elected Board Chairman, J. Granger Macfarlane

The newly elected Board Chairman thanked everyone and noted he would do his best to incorporate the members' thoughts and ideas and comments and recommendations into the overall institutional recommendations and decisions that the Board will make. He noted the three standing Board committees operative in the past: the Administration, Liaison, and Correctional Services/Policy & Regulations. He suggested the Board might want to consider adding one or two committees as time goes on. He asked members of

the Board to consider those three committees, and advise him which committee the members would like to serve on. He noted he would do his best to seat members on the committee they requested.

Several Board members then asked general questions and voiced concerns, which were addressed by Mr. Johnson and Department staff members.

Ms. Killilea referred to the Board meetings. She stated that traditionally the Board has met on the 3rd Wednesday of each month, and she asked that the Chairman consider keeping a specific date for the meetings for planning purposes. In addition, she asked that the Board be enlightened as to what the committees actually do so that the Board members will have some idea of what might be appropriate for them. Mr. Leininger explained that the three standing committees would be covered in the Board's briefing today. He reiterated that the Board's By-laws address the standing committees in detail.

Prior to commencing the next agenda item, Mr. Johnson introduced Ms. June Kimbriel, the Department's Inspector General.

V. Board of Corrections

Duties and Responsibilities

At this time, Mr. Leininger informed the Board members on the activities of the Board. This was summarized in the information provided to each Board member present by way of the briefing book.

Mr. Leininger restated his position as manager of the Communications Unit, which includes the public information office, victim services unit, the legal affairs office, which also handles FOIA requests, and support for the Board. He noted there is no full-time staff member to the Board but it would be given as much assistance as possible. He went through each Article of the By-laws in order to familiarize the Board and show how each impacts the functions of the Department. He emphasized that Article I of the By-laws sets out the organization, purpose, and powers and duties of the Board, and noted the most important function of the Board is the adoption of policies and guidelines for the Department, state correctional facilities, community correctional facilities, and local correctional facilities. He noted that later in the presentation Ms. Jan Dow would go into more regulations and their adoption. As relates to the Closed Meeting section of the By-laws, Mr. Leininger deferred to the representative from the Attorney General's Office, who had no comment at the time.

The briefing was turned over to the Department staff who will be interfacing directly with the Board.

Compliance & Accreditation (C&A)

Mr. Hagenlocker introduced himself to members of the Board and explained the Compliance and Accreditation unit's interaction with the Board. The unit is responsible

for performing certification audits, ACA audits, environmental health inspections, as well as security audits. The certification and ACA applications are the only two that actually interface with the Board. The rules and regulations guiding these two applications are covered under the Administrative Code, 6 VAC 15-20, entitled the Regulations Governing Certification and Inspection.

Mr. Hagenlocker went on to explain the compliance and accreditation process. The Board's adopts the Standards, which cover correctional facilities, probation and parole, residential programs, day reporting centers, as well as jails and lockups. A Board Motion to utilize the ACA Standards as published as the template for audits was passed last year. Currently, the Department pursues ACA Standards for correctional facilities, for probation and parole, for day reporting centers, and residential facilities. Current Board Standards for Jails and Lockups are the auditing tool for local facilities, although the Board also passed that where a jail has attained ACA accreditation, that accreditation can be substituted for the three-year certification audit. Audit teams consist of teams from the field for the non-contract entity; in other words, where a contract has not been signed by the Director with ACA. Board Standards apply for these audits. These non-contract audit teams are led by team leaders from the C&A staff. All audit findings are reported to the Correctional Services Committee, and the Chairperson of the committee presents the report to the full Board for approval. The Board can take one of four actions: unconditional certification; a letter requesting corrective action with a time line attached; probationary certification; or decertification.

Local Jail Oversight

Mr. Howerton introduced himself to members of the Board and talked about jail oversight. Jail oversight includes construction reimbursement, Life, Health & Safety inspections, and the jail contract bed program. He explained the Board of Corrections has considerable oversight responsibility of local jails. Not only are Department of Corrections' facilities, but every correctional facility in the State of Virginia is overseen to some degree by the Board of Corrections. Local jails are comprised of not only city or county jails, under the administration of the sheriff, but also regional jails under private administration. Currently in Virginia there are 89 total jails and 22 lockups. Mr. Howerton noted his unit meets with the Board primarily with the Correctional Services Committee, which is the Committee that takes up jail business.

In addition, he noted the Liaison Committee is a principle avenue for discussion between jail administrators, sheriffs, and the Department and that it is a problem-solving group. His unit works directly with the Liaison Committee.

He then went on to describe jail construction oversight. The State of Virginia is one of the few states in the nation that provides funding for local jail construction. Depending on the type of jail, if it is a city or county jail, the locality may be eligible for up to 25% reimbursement of construction costs. If it is a regional jail, it may be eligible for up to 50% reimbursement of construction costs. Since 1993, over 5,000 beds have been added to the operational capacity of local jails statewide. Currently, there is construction in

several localities across the state. All of these projects were reviewed by the Board of Corrections through the Correctional Services Committee and voted on and approved by the full Board.

Another area of Board jail oversight responsibility is jail inspections. Jails have been inspected by the Department of Corrections for many years but in 1995, the General Assembly passed mandated unannounced inspections of all local jails annually. Unit inspectors inspect every jail, regional jail, and lockup in Virginia annually; that is, unless the inspection is suspended by the Board of Corrections due to achieving 100% compliance during the certification audit. Section 53.1-68 of the Code of Virginia establishes Standards for Local Jails and Lockups. Previously, there were 34 Life, Health, Safety Standards. The new Standards now encompass 44. Copies of the new Standards have just been mailed out. These inspections are reviewed by the Correctional Services Committee and then reported to the full Board if any action is required. Any cited deficiencies that are brought up concerning any Life, Health, Safety Standards require corrective action plans. Virginia has enforcement authority. The Board is vested with that. Under 53.1-69 of the Code of Virginia, the Board can order the prohibition of confinement for a substandard jail. That has only happened one time but that was for a situation where there was substandard compliance with Board Standards.

Mr. Howerton closed with the Department's jail contract bed program. The Board does not have extensive oversight of this program, but nevertheless, it is an agreement between local jails and the Department that is working very well. It was authorized in 1992. There are approximately 200 prisoners in the program. It allows prisoners who are near release to be transferred back to a local jail to participate in the local jail's work release program. There is an incentive paid to those jails for participation of the prisoner in that program. Historically, prisoners have established jobs and have stayed in the locality upon their release, holding that job. There are over 140 employers who work with various local jails in that program.

Regulatory Process

Ms. Dow prefaced by stating that she had provided copies of the Board's Regulations to each of the members. Ms. Dow introduced herself as the Agency Regulatory Coordinator. She reviews all documents submitted for filing and publication in the Virginia Register to ensure that required information and content is included and the document is processed and formatted properly. She serves as the liaison between the agency and the Virginia Register.

The handout provided to the members gave a brief description of the various stages of regulatory action and other information about the regulatory process. She stated she regularly meets with the Correctional Services/Policy & Regulations Committee to provide updates on stages of regulatory actions of the Board and to provide input and the exchange of information with the Board. She noted that Board regulations are general rules having force of the law, which assist in guiding the Department; and it is the Department's function to implement the policies, regulations, standards, and guidelines

promulgated by the Board, where the Director of the Department ensures the implementation of these regulations on a day-to-day basis through Departmental procedures.

Ms. Dow stated the Board currently has 10 regulations in effect. There are presently four regulatory actions that are in various stages of review: Public Participation Guidelines, Regulations for Human Subject Research, Standards for Planning, Design, Construction & Reimbursement of Local Correctional Facilities, and Regulations Governing Certification and Inspection. The approximate time required for the regulatory process is 18 months. It may be longer or shorter depending on the regulation. She noted the Department also has three regulations that are exempt from the requirements of the regulatory review process set forth by the *Administrative Process Act* of the Code. These regulations all have to do with actions relating to inmates, of prisons, or of community correctional facilities. The three regulations are the Standards for State Correctional Facilities, the Standards for State Community Correctional Units, and the Standards for Community Residential Programs. The basic three stages of regulatory action are the Notice of Intended Regulatory Action (NOIRA), the proposed stage, and the final stage.

Lastly, Ms. Dow noted that the Governor's Executive Order 21-2002 requires a periodic review of existing regulations at least once every four years. In the coming months, the Board will be apprised of the stages of the various regulations, and she will be able to provide the Board with more information at that time.

The Attorney General's representative explained more fully what constitutes whether a regulation is subject to the *Administrative Process Act*. If the regulation is housekeeping, it applies only within the agency, it is exempt from the *Administrative Process Act*. If you are dealing with a regulation that is going to impact someone outside the agency, then the *Administrative Process Act* would apply. For example, if you promulgate regulations that have to do with operations of DOC prisons, there is no need to go through the *Administrative Process Act*. If you are promulgating regulations that have to do with reimbursement to local jails, thus clearly impacting the localities and taking you outside the Department of Corrections, that is going to have to go through the *Administrative Process Act*.

The Chairman thanked each Unit manager and the Assistant Attorney General for their presentations and comments.

VI. Board Orientation (Overview of Board Briefing Book)

The Board Chairman asked if this overview had not already been accomplished. Mr. Leininger responded that there were a few items, which he wanted to bring to the Board's attention. He noted the Department's Mission Statement on the cover, which is something that has been worked on very strenuously. Then, under the Department Profile tab, under Strategic Planning, is the Department's Vision and Mission. They were

the two items that Mr. Leininger felt deserved special attention. He noted that the rest of the briefing book would probably best be taken in by each individual member.

VII. Budget Briefing

Mr. Jabe introduced Mr. Louis Eacho, the Department's Budget Development manager. Mr. Eacho brought the Board up to date on the budget issues facing the Department; namely, budget cuts that have been made over the last couple of years and the current mandate by the Governor for every agency to affect 7%, 11%, and 15% reductions, as well as the decline in the Department's out-of-state inmate revenue.

In general, one issue facing the Department deals with the budget reductions that it has already incurred to date in addition to the reductions that the Department has been tasked with developing for the balance of this year and next fiscal year as a result of the projected \$1.5 billion statewide shortfall. Corrections' share at the moment could be anywhere from \$13 million up to about \$32 million for this year. Next year, it could be anywhere from just under \$17 million to over \$35.7 million

Mr. Eacho addressed the out-of-state situation. When the *Appropriations Act* was passed last spring, DOC budgets for the current fiscal year (FY03) and FY04 were based on over 2,000 out-of-state contract prisoners. The Department also anticipated being able to sell approximately 500 beds in addition to either the Federal Bureau of Prisons or to the State of Connecticut to house inmates at Greensville Correctional Center. Then, the Federal Bureau of Prisons gave notice they would not be extending their current contract. That affected approximately 1,228 inmates. The Department's original assumption was that it could draw from the sale of the 2,000 beds, which equated to approximately \$48 million this year in revenue and then close to \$43 million in FY2004 revenue. Those amounts have dropped considerably, and the Department is now looking at about \$30 million in revenue this year and just over \$12 million next year. The Department's projections take into account that the State of Vermont will choose to pull out its inmates and go with a private prison vendor, although no decision has yet been reached.

As mentioned, the Department would have to absorb this shortfall absent other funding being found by the state. Therefore, the Department recommended to the Governor that unless additional resources could be found outside of the Department, it would be necessary for DOC to close three existing prisons. The proposal that the Department made included accelerating the closing date at Staunton Correctional Center, which was already in the current budget to be closed at the end of June, 2003. That date would be accelerated to December 10, 2002. Two other institutions were in the Department's proposal; the closure of the main compounds only at Brunswick Correctional Center and Southampton Correctional Center, both on December 10, 2002.

The criteria that the Department used to arrive at its proposal was design of the facilities and any inefficiencies in cost that would drive up the per-unit cost to an abnormal rate compared to other comparable facilities. The Department also critiqued age and the

physical plant condition of these facilities in terms of what they anticipated to be the capital cost of keeping these up in the future, and the basic premise was to try to find the largest amount of savings to meet this target with the least loss of bed space involved. It is important to emphasize the Department could well utilize all of these facilities to meet the backlog of state-responsible convicted felons in the local jails if money for their operation was available. The only reason behind this proposal was to deal with the budgetary shortfall that was created by the unanticipated loss of both federal and out-of-state inmates. The Governor's Task Force is reviewing the Department's proposal.

Mr. Eacho then addressed budget reductions in general. DOC has already incurred significant reductions over the 2002 biennia as well as the 2002-2004 biennium. The reductions over those four financial years add up to almost \$111.6 million off the Department's appropriation (\$13.8 million reduction in FY 2001, \$25.4 million in FY 2002, \$27.5 million in FY 2003, and \$44.9 million in FY 2004).

The most recent reduction plan that the Department had to enact this past spring, as part of the *Appropriations Act*, cut into all areas of the Department including security, administration, counseling, treatment, rehabilitation, and bed capacity. These actions did result in displacement of staff. There were 274 individuals that were impacted. Of those, the Department was fortunate to place most within the Department. There were 16 layoffs that resulted. Some examples of reductions to date: abolished administrative positions by closing the Northern Region and realigning institutions and community facilities in the remaining three regions for both the Division of Institutions and the Division of Community Corrections. The Department made targeted reductions in administrative positions within central headquarters as well. The Department had to reduce its use of perimeter tower security at several lower-level security facilities. It had to eliminate its planning for the SABRE treatment program. It reduced several treatment program supervisor positions, and then beds were taken off line. As Staunton is targeted for closure at the end of June, 2003, the Department has taken off line close to 1300 beds in our Division of Institutions since the spring of 2002. The Department's Division of Community Corrections residential beds have also been impacted, which equates to a reduction of approximately 200 in alternative sanction beds.

In closing, he addressed the Department's plans to meet its 7%, 11%, and 15% targets. These targets range from approximately \$13 million to \$32 million this year to about \$17 million to \$35.7 million next year. The Department is working under the assumption that although the Corrections Facility Task Force has not completed their assignment and the Governor has not made his ultimate decision, the accelerated closing of Staunton will occur along with closure of Brunswick and Southampton Correctional Centers in order to meet its proposed target. All support functions within DOC institutions, community corrections, or Correctional Enterprises as well as central headquarters building are being closely scrutinized to meet the reduction requirement. Because of the size of the reduction in fiscal year 2003, if these targets stand, it would likely have to begin implementation as early as December, 2002, and the Department will be providing the Board with details as they become available.

At this point, the Chairman introduced Mr. Kallen. The introduction was followed by an in-depth question and answer budget discussion. The Honorable John W. Marshall, Secretary of Public Safety, was introduced and joined the meeting discussion.

VIII. Introduction from Attorney General's Office (Mr. Davis)

Mr. Davis introduced himself and noted that the Board would normally see Alan Katz at meetings. He stated that his office is the source of legal representation for not only the Department but for the Board. His office does not traditionally address the Board unless there is a particular matter coming up. Mr. Davis explained that 90% of what is done by his office is for the Department of Corrections, the Virginia Parole Board, and the Department of Juvenile Justice. A fair amount of that is the defense of inmate lawsuits usually brought under Federal Civil Rights statutes.

IX. Future Meeting Plans

The Chairman noted that members should contact him with respect to committee assignments, which will be made prior to the next Board meeting. Tentatively, the next meeting will be set sometime the last week in October in order to comply with the 30-day posting requirement of the Virginia Register. In closing, the Secretary of Public Safety thanked the Board very much for agreeing to serve and for the work that previous Board members had done.

X. Adjournment

At this time, the meeting was adjourned.

(Signature copy on file)

J. GRANGER MACFARLANE, CHAIRMAN

COLLEEN K. KILLILEA, SECRETARY